Supreme Court, U.S.
FILED

04-1165 FEB 28 2005

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IN THE

Supreme Court of the United States

ANDREW BEVAN,

Petitioner

v.

THE FLORIDA BAR

Respondent.

On Petition For Writ of Certiorari
To The Supreme Court of Florida

PETITION FOR WRIT OF CERTIORARI

ANDREW BEVAN, *ATTORNEY PRO SE,* 1200 Masanabo Lane, Fort Myers, FL 33919, 239-939-2400

QUESTIONS PRESENTED

I. Do Felon Disfranchisement Laws Fail Review under Strict Scrutiny in violation of the United States Constitution.

II. Did The Florida Bar and the Referee violate Petitioner's 5th Amendment Rights by submitting and accepting transcripts of a criminal trial where the Petitioner had been compelled to testify when the State Attorney had asked the Jury during voir dire if they wanted to hear the Petitioner testify.

III. Did The Florida Supreme Court err when it denied the Petitioner Andrew Bevan his equal protection rights in issuing an order to suspend the Petitioner Andrew Bevan for a period of 91 days based on Florida Case Law that violates the United States Constitution under The Florida Bar v. Clark, 359 So. 2d 863 (Fla. 1978) and The Florida Bar v. Moody , 577 So. 2d 1317 (Fla. 1991) whereupon the law is premised that an attorney cannot practice in Florida if they cannot vote for the Judge before whom they practiced or to be a juror when hundreds of foreign citizens are Florida Bar Attorneys and they cannot vote for the Judge before whom they practiced or to be a juror.

IV. Did The Florida Supreme Court err when it denied the Petitioner Andrew Bevan his equal protection rights in issuing an order to suspend the Petitioner Andrew Bevan for a period of 91 days and until civil rights are restored when there are numerous members of the Florida Bar who do not possess civil rights and are in good standing with the Florida Bar.

V. Did The Florida Supreme Court err when it denied Petitioner's equal protection rights when it denied Expert neuropsychiatrist Dr. Schaerf from rendering his expert opinion that the Petitioner

Andrew Bevan was incompetent at the time of the offense of Felony Criminal Mischief.

VI. Is it a denial of the equal protection clause of the United States Constitution for The Florida Supreme Court to deny the Petitioner Andrew Bevan the right to practice law in Florida for committing a felony criminal mischief in excess of $1,000.00, yet allow self destructive illegal drug consuming attorneys to continue to practice law without reprisal when they or others have reported their illegal criminal activities to the Florida Bar.

VII. Did The Florida Supreme Court commit an unlawful seizure in violation of the 14th Amendment to the United States Constitution when they suspended the Petitioner Andrew Bevan for 91 days because the Petitioner Andrew Bevan may never again regain his civil rights, a condition precedent to practicing law.

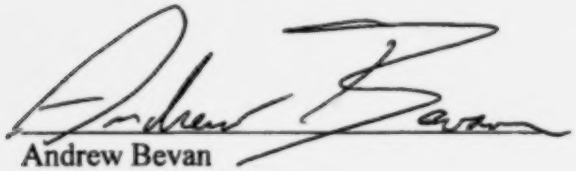
VIII. Did The Florida Supreme Court err and deny the Petitioner Andrew Bevan his equal protection rights when the lower Court suspended him from practicing law for 91 days and until his civil rights are restored for a Felony Criminal Mischief in excess of $1,000.00 while during the same time period the same Florida Supreme Court allowed other attorneys convicted of felony dishonesty to resume practicing as attorneys after a ninety (90) day suspension which said 90 day suspension automatically allows attorneys such as Attorney Titone who was suspended for 90 days for felony dishonesty to resume practice without their civil rights being restored.

CERTIFICATE OF INTERESTED PARTIES

The undersigned attorney pro se certifies that the following listed parties have an interest in the outcome of the case.

ANDREW BEVAN
PETITIONER

THE FLORIDA BAR
RESPONDENT



Andrew Bevan
Attorney Pro Se

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STATEMENT OF JURISDICTION

The United States Supreme Court has jurisdiction over this case in accordance with the Equal Protection Clause, the 1st Amendment, the 5th Amendment and the 14th Amendment to the United States Constitution. Andrew Bevan petitions this Court from the ruling of the Florida Supreme Court dated January 20, 2005.

STATEMENT OF THE CASE

Petitioner Andrew Bevan was prosecuted as a result of a political vendetta by former State Attorney Joseph D'Allassandro, and former Sheriff John McDougal. D'Allassandro and McDougal enjoined others to have Attorney Andrew Bevan prosecuted as a felon in order to have his civil rights taken away from him in an effort to prevent Attorney Andrew Bevan from legally representing his father Brian Bevan in exposing crimes and corruption in the twentieth judicial district. Two of those who are now defendants who were enlisted to promote this political vendetta were Sheriff's Deputy Hudnall who lived on an adjoining street north of the private lane leading to the Bevan's residence and assistant State Attorney Arakalian who lived on the southern side of the private lane both within a few hundred feet of the family residence. These two defendants along with

twenty-eight (28) of Andrew Bevan's neighbors met in secrecy in their homes after hours with other sheriff's deputies, assistant state attorneys and a state assembly man in violation of Florida's Sunshine Law in an effort to have Andrew Bevan prosecuted as a felon. At one of the secret meetings, Richard Travis Cowart appeared on television with the caption "Angry at neighbor" and said something has to be done. That something was the prosecution of the Petitioner for Felony Criminal Mischief. Joseph Dufrat appeared on television and said "Either he is going to die, or someone is going to die, because we have people in their 40's and 50's who are going to defend their homes." Former State Attorney Joseph D'Allassandro sent numerous faxes to Marilyn Dufrat regarding the prosecution of Andrew Bevan and it was Marilyn Dufrat who falsely accused the Petitioner of playing music too loud that resulted in the unlawful placement of an electronic monitoring device being placed on Petitioner's ankle and in his home during pretrial that would not allow the Petitioner to travel more than 50 feet from the electronic monitoring device. Former State Attorney Joseph D'Allassandro has only appeared in three cases as acting State Attorney during his 25 year reign in the 20th Judicial Circuit. Joseph D'Allassandro appeared in two murder cases some

twenty years ago and then he appeared in Petitioner's criminal trial to prosecute Andrew Bevan. Former State Attorney Joseph D'Allassandro personally prosecuted the Petitioner as the fulfillment of a political promise to Petitioner's thirty neighbors and the Lee County Sheriff John McDougal. The source of all of this hatred towards the Petitioner is the fact that the Petitioner is the son of the chief political enemy of Joseph D'Allassandro, John McDougal and former Sheriff Frank Wanicka. In fact, Petitioner's father sued Joseph D'Allassandro and Former Sheriff Frank Wanicka and won in the Second District Court of Appeal in Lakeland. Petitioner's father has published a website called maliciousprosecution.com that describes how former State Attorney Joseph D'Allassandro and Sheriff Frank Wanicka wrongly prosecuted an innocent black man by the name of Delbert Tibbs who was placed on Death Row for two and a half years and whose conviction was overturned by the United States Supreme Court. Petitioner's father testified at the Brad Jackman suicide inquest where the involvement of former Sheriff Frank Wanicka and State Attorney Joseph D'Allassandro was called into question regarding their involvement into the death of Brad Jackman. The facts that gave rise to the Petitioner's criminal trial are that the Petitioner

called the Lee County Sheriff's Department regarding two unruly construction workers. The Sheriff's Deputy that arrived at Petitioner's home told him that he was not going to help him because he was a Bevan. So the Petitioner decided to personally ask the construction workers to keep the noise down. The construction workers attacked Andrew Bevan with their tools hitting him on his back, neck and head. One construction worker held an electric drill to Petitioner's head and with it running next to Andrew Bevan's ear stated "I'm going to screw your brains out you crazy motherfucker." The Petitioner managed to get the workers off of him by throwing sand in their face. As the Petitioner attempted to flee the scene, the construction workers pointed a loaded glock pistol and another gun at him. Fearing that the construction workers would point their guns at him from their truck, the Petitioner broke the glass on their truck with his golf club. The guns were left out of evidence and out of the probable cause report. In fact, an entire paragraph was missing from the probable cause report. The glock pistol was taken into custody by the Sheriff's Department after the Petitioner had been incarcerated and after first appearance by the Petitioner. At trial, the State Attorney asked the jury during voir dire if they wanted to hear Andrew Bevan testify. One juror said "I don't think you

should be asking that question" and another juror said "I want to hear him testify." As a result, the State of Florida violated Petitioner's 5th Amendment right by compelling him to testify before the jury. The Florida Bar violated Petitioner's 5th Amendment right not to testify by submitting before the referee the transcripts of the criminal trial.

SUMMARY OF THE ARGUMENT

Felon Disfranchisement Laws Fail Review under Strict Scrutiny by the United States Constitution.

Florida has a habit of violating Defendant's 5th Amendment Right by compelling them to testify in Court. In this particular case, the State Attorney compelled Andrew Bevan to testify against himself by asking the Jury during voir dire if they wanted to hear him testify. Trial counsel objected and moved for a mistrial but that was denied by the Court. The Florida Bar violated Andrew Bevan's 5th Amendment Rights by submitting the transcripts of the criminal trial before the Referee in order that he be suspended from the practice of law. The equal protection clause of the United States Constitution protects everyone in the United States from being treated differently from another group or class based upon an unconstitutional law. In the present case, The Florida Bar allows literally hundreds of attorneys who are foreign citizens

the right to practice law in Florida when they do not posses the right to vote for the Judge before whom they practice or to be a juror. The Florida Bar and the Florida Supreme Court unfairly denies the Petitioner his equal protection rights under The Florida Bar v. Clark, 359 So.2d 863 (Fla. 1978) and The Florida Bar v. Moody, 577 So.2d 1317 (Fla. 1991) and suspends the Petitioner Andrew Bevan for a period of 91 days. The difference between a 90 day suspension and a 91 day suspension is that with a 90 day suspension the Attorney does not need his civil rights restored whereas with a 91 day suspension the suspended Attorney needs his civil rights restored, the right to vote for the Judge before whom they practice or to be a juror. The Florida case law under Clark and Moody denies the Petitioner his equal protection rights protected under the United States Constitution because Foreign Citizens can practice law in Florida without the right to vote for the Judge before whom they practice or to be a juror. If a foreign national is allowed to practice law in Florida without civil rights, then the Petitioner should be allowed to practice law as well.

The lower Court erred and denied the Petitioner Andrew Bevan his equal protection rights in issuing an order to suspend the Petitioner for a period of 91 days and until civil

rights are restored when the lower Court and the Florida Bar allows numerous felons the right to practice law in Florida and to be in good standing with the Florida Bar some whom have only been suspended for 15 days. These other felons who practice law under the Florida Bar and the Florida Supreme Court have committed crimes of dishonesty, money laundering and theft yet they are allowed to continue to practice in their chosen profession. Yet the Florida Bar and the Florida Supreme Court takes a different standard with the Petitioner who was convicted of criminal mischief and suspends him for a period of 91 days pending reinstatement of his civil rights which may never happen. It is unconstitutional to allow numerous felons convicted of dishonesty and theft from clients, the right to practice law in Florida and deny the Petitioner the same right to practice law simply because some property in excess of $1,000.00 was damaged.

The Florida Courts appear to have a double standard. In the case of Maria Pete a Florida Attorney who stole $120,000.00 from one client was allowed to practice law because her doctor testified that she was incompetent at the time of the offense. Not only was the Petitioner denied the right to present evidence that he was incompetent at the time of the offense of criminal mischief to the lower Court, the

Florida Supreme Court, but the Petitioner was also denied the right to present evidence that he was incompetent at the time of the offense during the criminal trial. So it is quite evident that the Florida Courts favor some criminal defendant's and allow them the right to present evidence that they were incompetent at the time of the offense and not allow other defendants such as Andrew Bevan the right to present evidence of incompetency based upon political vendetta's.

It is a well known fact that the Florida Bar nurtures and tolerates untold hundreds of Florida Bar Attorneys who use illegal narcotics and does nothing to suspend them nor prosecute them. They have a hotline and counselors console these self-destructive attorneys yet for some reason they are never suspended nor prosecuted. It is as if the Florida Bar and the Florida Supreme Court has the policy of condoning illegal narcotic sales, transportation and use yet denies the petitioner his equal protection rights to practice law simply because some property in excess of $1,000.00 was damaged. It is far more detrimental to the community to have an attorney addicted to crack cocaine or heroin then to have an attorney who has caused some property damage in excess of $1,000.00.

The Florida Supreme Court erred and committed an unlawful seizure in violation of the 14th Amendment to the

United States Constitution to suspend the Petitioner Andrew Bevan for 91 days pending restoration of his civil rights because the Petitioner Andrew Bevan may never again regain his civil rights. In Florida, the restoration of civil rights is not easily attainable and not guaranteed. So the 91 day suspension is an unlawful seizure because the petitioner may never again regain his civil rights and therefore the punishment extends not only beyond the 91 days but quite possibly for life. So it is simply unconstitutional to take a right from the Petitioner Andrew Bevan and never give him the chance of regaining that right.

ARGUMENT

I. Do Felon Disfranchisement Laws Fail Review under Strict Scrutiny in violation of the United States Constitution.

One reason should bring felon disfranchisement challenges under a stricter standard of review because they concern the general, fundamental right to vote. The laws fail to withstand review. Even assuming states have legitimate, or perhaps compelling, state interests with respect to regulating suffrage qualifications, the means by which felon disfranchisement laws serve those interest are overinclusive and only tenuously related. Courts should

therefore add felon disfranchisement to the catalogue of restrictions that states may no longer impose on the right to vote.

As the Warren Court elevated the right to vote to the status of a fundamental right in the 1960s, the Court repeatedly alluded to why the right merits so much protection. In short, voting preserves all other rights and is central to the notion of a democracy; without equal access to the ballot, the government is not one of the people, but rather one selected by an elite group deemed "worthy" enough to vote. Kramer v. Union Free Sch. Dist., 395 U.S. 621, 626 (1969). States typically argue that they have an interest in preventing electoral fraud, maintaining the "purity" or integrity of the ballot box, restricting the franchise to those who support or have an interest in the state itself, and deterring future crime. Green v. Bd. Of Elections, 380 F.2d 445, 451-52 (2d Cir. 1967). The Court has acknowledged the validity of some of these goals in relation to the right to vote, but has generally found that states use these "formidable-sounding" interests as a guise to implement impermissible restrictions on the right to vote. Kramer, 395 U.S. 621, 631-32 (1969). Yet states advance these same interests in support of felon

disfranchisement and courts have validated them. Such rationales, however, do not support these claimed interests in a manner superior to those means previously struck down.

While a state may claim that felon disfranchisement prevents electoral fraud, the total number of election-related crimes is negligible, and arguments regarding fraud are much more rhetorical than factual. See Lori Minnite & David Callahan, Demos, Securing the Vote: An Analysis of Election Fraud (2003) (finding that no significant threat of voting fraud exists). Previous commission of a felony does not logically lead to future commission of electoral fraud, nor does previous non-commission of a felony rule out the possibility of future electoral fraud; one has no bearing on the other. When states have asserted electoral fraud in other contexts, the Court has held that speculative fears are not enough to support infringing upon a constitutional right. Buckley v. Am. Constitutional Law Found., Inc., 525 U.S. 182, 210 (1999) (invalidating criteria for petition circulation). Further, states have other workable means to prevent fraud. Ramirez v. Brown, 507 P.2d 1345, 1351 (Cal. 1973). Thus, disfranchisement for

any felony conviction is not a narrowly-tailored route to achieve states' interests in preventing election fraud.

As a variation on the claimed interest of preventing electoral fraud, states have proposed an interest in preserving the "purity" of the ballot box. This argument takes several forms, generally focusing on either the overall integrity of the ballot or on a violation of the social contract. The "purity" aspect of the argument is particularly dangerous given the historical turns such a theory has followed. Historically, the same rationale was advanced for other exclusionary practices, such as poll taxes, literacy tests, and long residency requirements. States claimed that poll taxes ensured that only truly interested parties voted, and that literacy tests and residency requirements ensured "intelligent use of the ballot." Lassiter v. Northampton County Bd. Of Elections, 360 U.S. 45, 51 (1959). The Court has invalidated all of these requirements. Therefore, invoking identical rationales in support of felon disfranchisement laws should be suspect on similar grounds. While it is often argued that "purity" or integrity prevents fraud, the idea is vague and inherently signals that some groups are more worthy of the right to vote than others. As a matter of democratic

principal, one should be wary of assigning worth to members of the electorate. Although commission of a crime may potentially signal a questionable character, denying suffrage as a consequence should not be a valid option.

Another frequent claim by proponents of disfranchisement is that it protests the overall state and country from those who would otherwise vote in destructive ways. The claim of protecting the state from "subversive" voters fails as related to felon disfranchisement. The general assumption that commission of a crime indicates a desire to subvert the state is flawed. Persons with a felony conviction are subject to the same laws and control as the rest of the voting-age population, perhaps more so. Decisions made by elected officials continue to affect their lives and families in myriad ways; to pretend otherwise is disingenuous. Kramer, 395 U.S. 621, 631-32 (1969).

A felony conviction is not dispositive of one's political views. It is unlikely that crime policy is the sole reason that a voter supports a given candidate, nor does a conviction necessarily indicate a person's view regarding crime itself. That he or she will vote a straight "pro-

crime" ticket is unlikely, as is the chance that such candidates would win and subsequently sway enough legislators to change the law. Angela Behrens et al., Ballot Manipulation and the "Menace of Negro Domination": Racial Threat and Felon Disenfranchisement in the United States, 1850-2002, 109 Am. J. Soc. 559, 565-66 (2003). Further, were that situation to unfold, it would be the product of the larger democratic process, not that of people with felony convictions corrupting the ballot box or subverting state interests. The argument also presupposes that no crime-related policy is in need of change.

That criminal activity is the only widespread restriction on suffrage deemed worthy of disfranchisement is curious. Crime is not the only issue of interest in the country, and thus a felony conviction should not be considered the only act substantial enough to justify stripping away the right to vote. Further, the malleability of the term "felony" and what it encompasses should suggest that there is nothing inherent in criminal activity to justify losing the right to vote; two people committing the same act a few years apart in the same state may face drastically different consequences if a legislature reclassifies an offense. Moreover, for two similarly-

situated people in different states, the consequences may differ vastly. Differences in state disfranchisement laws also produce seeming inequity: someone convicted of drug possession in Florida indefinitely loses the right to vote while someone convicted of first-degree murder in Vermont never loses the right to vote.

If states cannot trust persons convicted of a crime to vote in the public interest, perhaps those found liable in civil suits also will not vote in the interest of society. Tort liability, for example, may signal poor decision making, as could filing for bankruptcy or accumulating debt. Those with traffic tickets have disobeyed the law, and according to one official even that should bear on the right to vote. Thomas B. Pfankuch, Clemency Board Very Cautious in Resoring Rights, Fla. Times-Union, June 3, 2001, available at http:// www.jacksonville.com/tu-online/stories/060301/met_6339439.html. A felony-level crime admittedly differs in severity from a traffic ticket or a civil judgment, but its relationship to suffrage remains as tenuous and illogical as the above examples.

As for the argument that criminal activity evidences a disinterest in the state, it is important to note the consistently low voter turnout by all eligible voters. Any

purported apathy toward states and government is not limited to persons with felony convictions. The blanket exclusion of this group because some would allegedly vote subversively is speculative, overinclusive, and not narrowly-tailored to any compelling state interest. These rationales against enfranchisement do not hold up under strict scrutiny.

Moreover, the idea that anyone might vote subversively or for the "wrong" candidate or interest is inimical to the concept of a democracy and representative government. The Court has stated previously that "fencing out' from the franchise a sector of the population because of the way they may vote is constitutionally impermissible." Carrington v Rash, 380 U.S. 89, 94 (1965) (invalidating a provision that prohibited members of the armed services from voting in Texas if stationed in the state). Although those disfranchised by felony convictions have committed a crime at some point in their lives, eliminating a large and growing population from having any right to vote undermines the concept of a representative government because states can restrict the size and representative nature of the electorate.

Although early disfranchisement laws were rooted in the concepts of deterrence and retribution, such rationales do not support modern forms of felon disfranchisement. The claimed deterrent effect of disfranchisement hinged primarily on the public nature of the loss of rights, but with the formalization of the criminal justice system and the growth of the country as a whole, today there is not a comparable public aspect. While the broad range of collateral consequences retains the aspect of an internal stigma for those with a criminal conviction, their disfranchised status lacks the same public and individualized stigmatic attention that existed in the "small communities" of colonial America. Further, a recent study suggests that there may be a link between voting and desistance from crime, which should support the idea of enfranchising rather than disfranchising those convicted of crimes. Christopher Uggen & Jeff Manza, Voting and Subsequent Crime and Arrest: Evidence from a Community Sample, 36 Colum. Hum. Rts. L. Rev. (2004).

Despite changes to laws in recent years and through the latter half of the twentieth century, over five million adults remain disfranchised. Legislative changes do not go far enough and are out of step with public opinion on the

issue both domestically and internationally. Voting is a fundamental right, and courts need to take that notion seriously by changing their approach to felon disfranchisement laws; approaching felon disfranchisement using a strict scrutiny standard of review—as is done with other restrictions on the right to vote—will ensure that voting is a true fundamental right.

II. Did The Florida Bar and the Referee violate Petitioner's 5th Amendment Rights by submitting and accepting transcripts of a criminal trial where the Petitioner had been compelled to testify when the State Attorney had asked the Jury during voir dire if they wanted to hear the Petitioner testify.

The Referee and the Florida Bar committed judicial error by admitting into evidence the transcripts of the criminal trial and making those transcripts part of the Report of Referee. Those transcripts reveal that the prosecutor asked the following question during voir dire: "Do you want to hear the Defendant testify." The record reflects that one juror stated "I don't think you should be asking that question." Another Juror stated "I want to hear him testify." The Petitioner was forced to testify because he knew that if he did not take the stand that he would be going to jail for a very long time. It was reversible error for the Florida Bar to submit to the Referee the transcripts

of the criminal trial where the Petitioner was forced to testify in violation of his 5th Amendment Rights. Miller v. State, 847 So.2d 1093 (Fla. 4th DCA 2003) State failed to demonstrate that prosecutor's impermissible comment on defendant's right to remain silent was harmless, and thus new trial was warranted. The test to determine if a comment is an improper comment on a defendant's right to remain silent is whether the statement is fairly susceptible of being interpreted by the jury as a comment on the defendant's failure to testify. U.S.C.A. Const. Amend. 5 Unless it is harmless error, a comment on the defendant's exercise of his right to remain silent is reversible error. Prosecutor's comment during closing arguments that the judge "also instructed you that the defendant has the right to remain silent. And he does. He did not take the stand in this case. State v. Kinchen, 490 So.2d 21 (Fla. 1985). "But there were two witnesses" constituted an impermissible comment on defendant's right to remain silent. The test to determine if a comment is an improper comment on a defendant's right to remain silent is whether the statement is fairly susceptible of being interpreted by the jury as a comment on the defendant's failure to testify. State v. Kinchen, 490 So.2d 21 (Fla.

1985). "Unless it is harmless error, a comment on the defendant's exercise of his right to remain silent is reversible error." Kiner v. State, 824 So. 2d 271 (Fla. 4th DCA 2002)(citing State v. DiGuilio, 491 So. 2d 1129 (Fla. 1986).

III. Did The Florida Supreme Court err when it denied the Petitioner Andrew Bevan his equal protection rights in issuing an order to suspend the Petitioner Andrew Bevan for a period of 91 days based on Florida Case Law that violates the United States Constitution under The Florida Bar v. Clark, 359 So. 2d 863 (Fla. 1978) and The Florida Bar v. Moody , 577 So. 2d 1317 (Fla. 1991) whereupon the law is premised that an attorney cannot practice in Florida if they cannot vote for the Judge before whom they practiced or to be a juror when hundreds of foreign citizens are Florida Bar Attorneys and they cannot vote for the Judge before whom they practiced or to be a juror.

The equal protection clause of the United States Constitution protects everyone in the United States from being treated differently from another group or class based upon an unconstitutional law. In the present case, The Florida Bar allows literally hundreds of attorneys who are foreign citizens the right to practice law in Florida when they do not posses the right to vote for the Judge before whom they practice or to be a juror. The Florida Bar and the Florida Supreme Court unfairly denies the Petitioner his equal protection rights by citing Clark and Moody and suspends the Petitioner Andrew Bevan for a

period of 91 days. The difference between a 90 day suspension and a 91 day suspension is that with a 90 day suspension the Attorney automatically resumes practice after 90 days without having his civil rights restored whereas with a 91 day suspension the suspended Attorney needs his civil rights restored; he needs to have the right to vote for the Judge before whom he practices and he needs to have the right to be a juror. The Florida case law under Clark and Moody denies the Petitioner his equal protection rights protected under the United States Constitution because Foreign Citizens can practice law in Florida without the right to vote for the Judge before whom they practice or to be a juror. If a foreign national is allowed to practice law in Florida without the right to vote for the judge before they appear or to sit on a jury as the Florida Bar requires the Petitioner in Clark and Moody, then the Petitioner should be allowed to practice law in Florida and Clark and Moody should be overturned.

IV. Did The Florida Supreme Court err when it denied the Petitioner Andrew Bevan his equal protection rights in issuing an order to suspend the Petitioner Andrew Bevan for a period of 91 days and until his civil rights are restored when there are numerous members of the Florida Bar who do not possess civil rights and are in good standing with the Florida Bar.

The lower Court erred and denied the Petitioner Andrew Bevan his equal protection rights in issuing an order to suspend the Petitioner for a period of 91 days and until civil rights are restored when the lower Court and the Florida Bar allow numerous felons the right to practice law in Florida and to be in good standing with the Florida Bar, some whom have only been suspended for 15 days. These other felons who are allowed by the Florida Bar and the Florida Supreme Court to practice law have committed crimes of dishonesty, money laundering and theft yet they are allowed to continue to practice in their chosen profession. However, the Florida Bar and the Florida Supreme Court takes a different standard with the Petitioner who was convicted of criminal mischief and suspends him for a period of 91 days pending reinstatement of his civil rights which may never happen. It is unconstitutional to allow numerous felons convicted of dishonesty and theft from clients the right to practice law in Florida and deny the Petitioner the same right to practice law because the Petitioner damaged some property in excess of $1,000.00.

V. Did The Florida Supreme Court err when it denied Petitioner's equal protection rights when it denied Expert neuropsychiatrist Dr. Schaerf from rendering his expert opinion that the Petitioner

Andrew Bevan was incompetent at the time of the offense of Felony Criminal Mischief.

The Florida Courts appear to have a double standard. In the case of Maria Pete a Florida Attorney who stole $120,000.00 from one client was allowed to practice law because her doctor testified that she was incompetent at the time of the offense. Not only was Petitioner Andrew Bevan denied the right to present evidence that he was incompetent at the time of the offense of criminal mischief to the lower Court, the Florida Supreme Court, but the Petitioner was also denied the right to present evidence that he was incompetent at the time of the offense during the criminal trial. So it is quite evident that the Florida Courts favor some criminal defendant's and allow them the right to present evidence that they were incompetent at the time of the offense and not allow other defendants such as Andrew Bevan the right to present evidence of incompetency based upon political vendetta's in violation of the equal protection clause.

VI. Is it a denial of the equal protection clause of the United States Constitution for The Florida Supreme Court to deny the Petitioner Andrew Bevan the right to practice law in Florida for committing a felony criminal mischief in excess of $1,000.00, yet allow self destructive illegal drug consuming attorneys to continue to practice law

without reprisal when they or others have reported their illegal criminal activities to the Florida Bar.

It is a well known fact that the Florida Bar nurtures and tolerates untold hundreds of Florida Bar Attorneys who use illegal narcotics and does nothing to suspend them nor prosecute them. They have a hotline and counselors console these self-destructive attorneys yet for some reason they are never suspended nor prosecuted. It is as if the Florida Bar and the Florida Supreme Court has the policy of condoning illegal narcotic sales, transportation and use yet denies the petitioner his equal protection rights to practice law simply because some property was damaged. It is far more detrimental to the community to have an attorney addicted to crack cocaine or heroin from Afghanistan practicing law in Florida then to have an attorney practicing law who has caused some property damage.

VII. Did The Florida Supreme Court commit an unlawful seizure in violation of the 14th Amendment to the United States Constitution when they suspended the Petitioner Andrew Bevan for 91 days because the Petitioner Andrew Bevan may never again regain his civil rights, a condition precedent to practicing law.

The Florida Supreme Court erred and committed an unlawful seizure in violation of the 14th Amendment to the United States Constitution to suspend the Petitioner Andrew Bevan for 91

days pending restoration of his civil rights because the Petitioner Andrew Bevan may never again regain his civil rights. In Florida, Criminal Mischief is a felony if property damage is over $1,000.00. It is a misdemeanor if the property damage is $999.00 or less. This number is often quite easily attained as most vehicle repairs these days cost quite a lot of money. Now that the Petitioner is a convicted felon, grouped with bank robbers, rapists, and murderers the lower Court says he can no longer practice law until his civil rights are restored. First of all, it costs at least $7,000.00 to hire an attorney to begin the restoration of civil rights. The Petitioner has to go before a clemency board and basically it is up to them to decide whether the Petitioner continues further in the restoration process. If the clemency board denies the Petitioner's request, then he will not receive his civil rights. If the clemency board decides to grant the Petitioner's request then the matter goes to the hands of politicians who usually deny the restoration of civil rights because they want to please the voters with a law and order attitude from the old west where one gave someone a fair trial and a fair hanging. So restoration of the Petitioner's civil rights may never be restored and the 91 day suspension would be tantamount to disbarment. Now if the lower Court thought that Felony

Criminal Mischief should be treated as disbarment then they would have ordered it. But the lower court said to the Petitioner you are suspended for 91 days and must have your civil rights restored before you can practice again. Well as noted above, in Florida, the restoration of civil rights is not easily attainable and not guaranteed. So the 91 day suspension is an unlawful seizure because the petitioner may never again regain his civil rights and therefore the punishment extends not only beyond the 91 days but quite possibly for life. So it is simply unconstitutional to take his right to practice in his chosen profession from the Petitioner Andrew Bevan and never give him the chance of regaining that right that was seized.

VIII. Did The Florida Supreme Court err and deny the Petitioner Andrew Bevan his equal protection rights when the lower Court suspended him from practicing law for 91 days and until his civil rights are restored for a Felony Criminal Mischief in excess of $1,000.00 while during the same time period the same Florida Supreme Court allowed other attorneys convicted of felony dishonesty to resume practicing as attorneys after a ninety (90) day suspension which said 90 day suspension automatically allows attorneys such as Attorney Titone who was suspended for 90 days for felony dishonesty to resume practice without their civil rights being restored.

The Petitioner Andrew Bevan is the only Florida Attorney convicted of Felony Criminal Mischief to be ever suspended from the Florida Bar for 91 days and until his Civil Rights are restored. When one considers the case of Florida Bar Attorney Titone and compares his case with the case of Andrew Bevan it is apparent that Andrew Bevan was denied his equal protection rights guaranteed by the Constitution. Titone was convicted of crimes of dishonesty and violations of Federal laws in interstate trafficking and was given only a 90 day suspension and allowed to resume his practice after 90 days without his civil rights being restored. The fairness doctrine of equal protection under the Constitution has been denied to Petitioner Andrew Bevan.

CONCLUSION

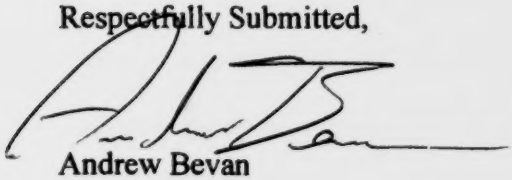
The Felon Disfranchisement Laws fail Review under Strict Scrutiny under the United States Constitution and should be nullified and overturned.

Petitioner Andrew Bevan should be suspended in accordance with a similar suspension to that which Florida Attorney Titone received from the Florida Supreme Court.

Wherefore, Petitioner Andrew Bevan seeks reversal and nullification of the Felon Disfranchisement Laws of the State of Florida.

Petitioner Andrew Bevan also seeks reversal and remand of the lower Court's Order to suspend him for a period of 91 days and seeks a suspension of 90 days.

Respectfully Submitted,



Andrew Bevan
Attorney Pro Se
P.O. Box 60777
Fort Myers, FL 33906
Telephone: 239-939-2400
Fla. Bar No. 0093238

APPENDIX

WHEREAS, it officially has been made known to me that it is necessary to appoint a referee for the Court pursuant to rule 3-7.6(a), Rules Regulating The Florida Bar, to preside in a disciplinary action brought by The Florida Bar pursuant to Chapter 3 of the Rules Regulating The Florida Bar in the matter of:

The Florida
Bar vs.
Andrew
Arthur
Bevan,
Supreme
Court Case
No. SC03-
275

NOW, THEREFORE, I, Harry Lee Anstead, under authority vested in me as Chief Justice of the Supreme Court of Florida, do hereby designate the Honorable David A. Demers, Chief Judge of the Sixth Judicial Circuit Court of Florida, to appoint a referee for the Court in the above matter and, within fourteen days of this order, to notify the Clerk of the Florida Supreme Court as to the judge appointed as referee. The referee shall hear, conduct, try and determine the matters presented and thereafter shall submit findings of fact and recommendations to the Supreme Court of Florida as provided in rule 3-7.6(k). **The referee's report shall be filed within 90**

days of the date of this order, unless there are substantial reasons requiring delay.

DONE AND ORDERED at Tallahassee, Florida on April 2, 2003.

CHIEF JUSTICE SUPREME COURT OF FLORIDA
ATTEST: THOMAS D. HALL CLERK, SUPREME COURT

Enclosed: Notice of Determination or Judgment of Guilt and Petition for Suspension; this Court's disposition order dated February 25, 2003; Petition to Modify, Terminate or Stay Felony Suspension and Motion to Appoint Referee; Response to Motion to Modify, Terminate or Stay Felony Suspension and Motion to Appoint Referee; Motion for Leave to File Reply to the Florida Bar's Response; this Court's order dated March 31, 2003; and this Court's order dated April 2, 2003.

IN THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT IN AND FOR PASCO AND PINELLAS COUNTIES, FLORIDA

ADMINISTRATIVE ORDER NO. 2003-015 PA/PI-CIR
RE: APPOINTMENT OF REFEREE

It has been officially made known to me that it is necessary to appoint a referee for the Court pursuant to the provisions of Rule 3-7.6(a), Rules Regulating The Florida Bar, to preside in a disciplinary action, and

Therefore, The Honorable Harry Lee Anstead, Chief Justice of the Supreme Court of Florida, by Order dated April 2, 2003, designated the Chief Judge of the Sixth Judicial Circuit to appoint a referee for the Supreme Court of Florida in that proceeding, it is hereby

ORDERED:

The Honorable Amy M. Williams, County Court Judge, in and for the Sixth Judicial Circuit, State of Florida, is hereby designated and appointed as referee for the Supreme Court of Florida, in the matter of:

The Florida Bar v. Andrew Arthur Bevan, Supreme Court Case No.

SC03-275;

The Honorable Amy M. Williams, as referee shall hear, conduct, try, and determine matters presented and shall submit findings of fact and recommendations to the Supreme Court of the State of Florida as provided in Rule 3-7.6(k). The referee's report shall be filed within 90 days of April 2, 2003, unless there are substantial reasons requiring delay.

The Honorable Amy M. Williams, is hereby vested with all and singular the powers and prerogatives conferred by the Constitution, laws of the State of Florida, and the Rules Regulating The Florida Bar, concerning a referee for the Supreme Court in this matter.

DONE AND ORDERED in Chambers at St. Petersburg Pinellas Cou

David A. Demers, Chief Judge

The Honorable Amy M. Williams

The Honorable Thomas D. Hall, Clerk of the Supreme Court of Florida
Scott K. Tozian, Counsel for Respondent
Susan V. Bloemendaal, Staff Counsel, The Florida Bar
Stephen Christopher Whalen, Assistant Staff Counsel, The Florida Bar
John F. Harkness, Jr., Executive Director, The Florida Bar
John Anthony Boggs, Staff Counsel, The Florida Bar
J. William Lockhart, Courts Administrator
Pasco and Pinellas County Law Libraries

Please note: Judge William's address is:
14250 49th Street North, Ch.
22, Clearwater, FL 33762

Supreme Court of Florida

TUESDAY, FEBRUARY 25, 2003

CASE NO.: SC03-275

Lower Tribunal No.: 2003-10,964(20A)(HFC

THE FLORIDA BAR vs.

ANDREW ARTHUR BEVAN

Complainant(s) Respondent(s)

The Florida Bar having filed on February 14, 2003, Notice of Determination or Judgment of Guilt and Petition for Suspension showing that Andrew Arthur Bevan has been convicted of a felony by the Circuit Court of the Twentieth Judicial Circuit in and for Lee County, Florida, and the above-named attorney having failed to file a petition with the Court requesting modification or termination of the suspension, Andrew Arthur Bevan is automatically suspended from The Florida Bar pursuant to 3-7.2(e) of the Rules Regulating the Florida Bar, and it is further

ORDERED that this suspension shall be effective thirty days from the date of this order so that respondent can close out his practice and protect the interests of existing clients. If respondent notifies this Court in writing that he is no longer practicing and does not need the thirty days to protect existing clients, this Court will enter an order making the suspension effective immediately. Respondent shall accept no new business from the date this order is filed until the suspension expires.

See Rule 3-5.1(g) of the Rules Regulating The Florida Bar.

Not final until time expires to file motion for rehearing and, if filed determined. The filing of a motion for rehearing shall not alter the effective date of this suspension.

A True Copy Test:

Thomas D. Hall Clerk, Supreme Court

kb Served:

JOHN ANTHONY BOGGS SUSAN VARNER BLOEMENDAAL
STEPHEN CHRISTOPHER WHALEN SCOTT K. TOZIAN

Supreme Court of Florida

MONDAY, MARCH 31, 2003

CASE NO.: SC03-275
Lower Tribunal No.: 2003-10,964(20A)(HFC)

The Florida Bar vs. Andrew Arthur Bevan

Complainant(s) Respondent(s)

Respondent's Motion for Leave to File Reply to The Florida Bar's Response is granted and said reply was filed with this Court on March 20, 2003.

A True Copy Test:

Thomas D. Hall Clerk, Supreme Court

bhp Served:

JOHN ANTHONY BOGGS SUSAN VARNER BLOEMENDAAL
STEPHEN CHRISTOPHER WHALEN SCOTT K. TOZIAN

Supreme Court of Florida

WEDNESDAY, APRIL 2, 2003

CASE NO.: SC03-275
Lower Tribunal No.: 2003-10,964(20A)HFC
The Florida Bar vs. Andrew Arthur Bevan
Complainant(s) Respondent(s)

Upon consideration of Respondent's Petition to Modify, Terminate or Stay Felony Suspension and Motion to Appoint Referee, Response of The Florida Bar and Reply thereto, Respondent's Petition to Modify, Terminate or Stay Felony Suspension, the Court concludes that there is good cause for the termination of the automatic suspension, which was based on a felony conviction arising from conduct that occurred in March 29, 1999. Further consideration as to whether the automatic suspension should be reimposed is hereby referred to a referee for hearing with any related disciplinary action that The Florida Bar states it intends to separately file (see paragraph 8 of The Florida Bar's response). The referee appointed to preside in this matter shall conduct a prompt hearing and within ninety days shall submit a report and recommendations to the Court. Accordingly, the automatic suspension issued by the Court on February 25, 2003, is hereby vacated pending receipt of the referee's report and recommendations as to both the automatic suspension and as to the disciplinary action and recommended discipline based on the felony conviction.

ANSTEAD, C.J., and WELLS, PARIENTE, LEWIS, QUINCE, CANTERO and BELL, JJ., concur.

A True Copy Test

Thomas D Hall Clerk, Supreme Comt

dy

Served:

JOHN ANTHONY BOGGS

SCOTT K. TOZIAN

SUSAN VARNER BLOEMENDAAL STEPHEN CHRISTOPHER WHALEN

Supreme Court of Florida

THURSDAY, JULY 10, 2003

CASE NO.:

SC03-275

Lower Tribunal No.: 2003-10,964(20A)HRC

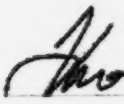
THE FLORIDA BAR vs.

ANDREW ARTHUR SEVAN

Complainant Respondent

The Referee's Request for extension of time is granted and the referee is allowed to and including August 1, 2003, in which to file the required referee's report. ALL OTHER TIMES ARE EXTENDED ACCORDINGLY.

A True Copy Test:
Thomas D Hall Clerk..
Supreme Court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Served:
JOHN ANTHONY BOGGS
SUSAN VARNER BLOEMENDAAL
STEPHEN CHRISTOPHER WHALEN
SCOTT K. TOZIAN
HON. AMY M. WILLIAMS, JUDGE

Supreme Court of Florida

MONDAY, SEPTEMBER 29, 2003

CASE NOS.: SC03-275 and SC03-791 Lower Tribunal Nos.: 2003-10,964(20A)HFC,

THE FLORIDA BAR vs.
ANDREW ARTHUR BEVAN

Complainant Respondent

The motion to withdraw based upon a conflict of interest filed in the above cause by Scott Tozian is hereby granted.

A True Copy Test:

Thomas D Hall Clerk, Supreme Court

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Served:

JOHN ANTHONY BOGGS

SUSAN WARNER BLOEMENDAAL

STEPHEN CHRISTOPHER WHALEN

SCOTT K. TOZIAN

ANDREW ARTHUR BEVAN

Supreme Court of Florida

MONDAY, OCTOBER 27, 2003

CASE NOS.: SC03-275 and SC03-791 Lower Tribunal Nos.: 2003-10,964(20A)HFC,

Respondent's motion for extension of time is granted and respondent is allowed to and including December 29, 2003, in which to serve the initial brief on the merits. NO FURTHER EXTENSIONS OF TIME WILL BE GRANTED TO RESPONDENT FOR THE FILING OF THE INITIAL BRIEF ON THE MERITS. All other times will be extended accordingly.

A True Copy Test:

ThomasD Hall Clerk, Supreme Court

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Served:

JOHN ANTHONY BOGGS

SUSAN VARNER BLOEMENDAAL

STEPHEN CHRISTOPHER WHALEN

ANDREW ARTHUR BEVAN

HON. AMY M. WILLIAMS, JUDGE

Supreme Court of Florida

TUESDAY, DECEMBER 30, 2003

CASE NOS.: SC03-275 and SC03-791 Lower Tribunal Nos.: 2003-10,964(20A)HFC,

THE FLORIDA BAR

vs

. ANDREW ARTHUR BEVAN

Complainant Respondent

Respondent's Initial Brief, which was filed with this Court on December 29, 2003, does not comply with Florida Rule of Appellate Procedure 9.120(a) and is hereby stricken. Respondent is hereby

directed, on or before January 21, 2004, to serve an amended initial brief which contains a Certificate of Compliance that immediately follows the Certificate of Service.

Per this Court's Administrative Order In Re: Mandatory Submission of Electronic Copies of Documents on Computer Diskette dated November 13, 2002, counsel are directed to include a copy of all briefs on a DOS formatted 3-1/2 inch diskette in WordPerfect 5.1 (or higher) format compatible in WordPerfect 10. **PLEASE LABEL ENVELOPE TO AVOID ERASURE.**

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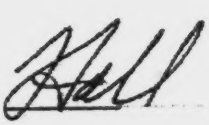

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Served:
JOHN ANTHONY BOGGS
SUSAN VARNER BLOEMENDAAL
STEPHEN CHRISTOPHER WHALEN
ANDREW ARTHUR BEVAN

Supreme Court of Florida

MONDAY, APRIL 26, 2004

CASE NOS.: SC03-275 and SC03-791 Lower Tribunal Nos.: 2003-10,964(20A)HFC,

At the direction of the Chief Justice, the above consolidated cases have been submitted to the Court without oral argument.

Per this Court's Administrative Order In Re: Mandatory Submission of Electronic Copies of Documents on Computer Diskette dated November 13, 2002, if you have not already done so, counsel are directed to include a copy of all briefs on a DOS formatted 3-1/2 inch diskette in WordPerfect 5.1 (or higher) format compatible in WordPerfect 10. **PLEASE LABEL ENVELOPE TO AVOID ERASURE.**

A True Copy Test:

Thomas D Hall Clerk, Supreme Court

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JOHN ANTHONY BOGGS SUSAN VARNER BLOEMENDAAL
STEPHEN CHRISTOPHER WHALEN ANDREW ARTHUR
BEVAN HON. AMY M. WILLIAMS, JUDGE

Supreme Court of Florida

TUESDAY, JANUARY 27, 2004

CORRECTED ORDER CASE NOS.: SC03-275 and SC03-791 Lower Tribunal Nos.: 2003-10,964(20A)HFC,

Respondent's reply brief, which was filed with this Court on January 26, 2004, does not comply with Florida Rule of Appellate Procedure 9.120(a) and is hereby stricken. Respondent is hereby directed, on or before February 16, 2004, to serve an amended reply brief which does not exceed fifteen (15) pages in length.

Per this Court's Administrative Order In Re: Mandatory Submission of Electronic Copies of Documents on Computer

Diskette dated November 13, 2002, counsel are directed to include a copy of all briefs on a DOS formatted 3-1/2 inch diskette in WordPerfect 5.1 (or higher) format compatible in WordPerfect 10. **PLEASE LABEL ENVELOPE TO AVOID ERASURE.**

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Thomas D Hall Clerk, Supreme Comt

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Served:

JOHN ANTHONY BOGGS

SUSAN VARNER BLOEMENDAAL

STEPHEN CHRISTOPHER WHALEN

ANDREW ARTHUR BEVAN

Supreme Court of Florida

WEDNESDAY, SEPTEMBER 8, 2004

CASE NOS.: SC03-275 *and* SC03-791 Lower Tribunal Nos.: 2003-10,964(20A)HFC,

THE FLORIDA BAR vs.
ANDREW ARTHUR BEVAN

Complainant

Respondent

Andrew Arthur Bevan has petitioned for review of the referee's report in this attorney discipline matter. Having considered the referee's report and the briefs filed by the parties in these consolidated cases, the Court approves the referee's findings

of fact and recommendations as to guilt. The Court also approves the recommended discipline as modified herein. Andrew Arthur Bevan is hereby suspended from the practice of law for ninety-one days and thereafter until he proves rehabilitation and shows that his civil rights have been restored. The suspension shall be effective thirty days from the filing of this order so that Bevan can close out his practice and protect the interests of existing clients. If Bevan notifies the Court in writing that he no longer is practicing law and does not need the thirty days to protect existing clients, this Court will enter an order making the suspension effective immediately. Bevan shall accept no new business from the date this order is filed until the date he is reinstated to the practice of law in Florida. If reinstated, Bevan immediately shall be placed on two years' probation. The Court declines to re-impose the automatic felony suspension in case number SC03-275.

Judgment for costs in the amount of $2,638.49 is hereby entered against Andrew Arthur Bevan and in favor of The Florida Bar, 650 East Jefferson Street, Tallahassee, Florida 32399-2300, for which sum let execution issue. Interest at the statutory rate shall accrue and be payable beginning thirty days after judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

It is so ordered.

PARIENTE, C.J., and WELLS, ANSTEAD, LEWIS, QUINCE, CANTERO and BELL, JJ., concur.

A true copy test

C^^——^-o W< ffi&LJtiiomasl) Hall Clerk, Supreme Court

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Served:
JOHN ANTHONY BOGGS
SCOTT K. TOZIAN
SUSAN VARNER BLOEMENDAAL
STEPHEN CHRISTOPHER WHALEN
ANDREW ARTHUR BEVAN
HON. AMY M. WILLIAMS, JUDGE

Supreme Court of Florida

THURSDAY, NOVEMBER 4, 2004

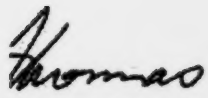
CASE NOS.: SC03-275 and SC03-791 Lower Tribunal Nos.: 2003-10,964(20A)HFC,

THE FLORIDA BAR
ANDREW ARTHUR BEVAN

vs.

Complainant(s) Respondent(s)

Respondent's motion for extension of time to file a motion for rehearing is hereby denied. Respondent is allowed to and including November 15, 2004, to file a Motion for Rehearing.



Thomas D Hall Clerk, Supreme Court

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Served:

JOHN ANTHONY BOGGS

SUSAN VARNER BLOEMENDAAL

STEPHEN CHRISTOPHER WHALEN

ANDREW ARTHUR BEVAN

HON. AMY M. WILLIAMS, JUDGE

Supreme Court of Florida

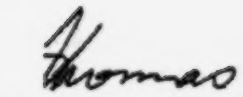
THURSDAY, NOVEMBER 4, 2004

CASE NOS.: SC03-275 and SC03-791 Lower Tribunal Nos.: 2003-10,964(20A)HFC,

THE FLORIDA BAR vs.
ANDREW ARTHUR BEVAN

Complainant(s) Respondent(s)

Respondent's motion for extension of time to file a motion for rehearing is hereby denied. Respondent is allowed to and including November 15, 2004, to file a Motion for Rehearing.



Thomas D Hall Clerk, Supreme Court

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Served:

JOHN ANTHONY BOGGS

SUSAN VARNER BLOEMENDAAL

STEPHEN CHRISTOPHER WHALEN

ANDREW ARTHUR BEVAN

HON. AMY M. WILLIAMS, JUDGE

WHEREAS, it officially has been made known to me that it is necessary to appoint a referee for the Court pursuant to rule 3-7.6(a), Rules Regulating The Florida Bar, to preside in a disciplinary action brought by The Florida Bar pursuant to Chapter 3 of the Rules Regulating The Florida Bar in the matter of:

The Florida
Bar vs.
Andrew
Arthur
Bevan,
Supreme
Court Case
No. SC03-
791

NOW, THEREFORE, I, Harry Lee Anstead, under authority vested in me as Chief Justice of the Supreme Court of Florida, do hereby designate the Honorable David A. Demers, Chief Judge of the Sixth Judicial Circuit Court of Florida, to appoint a referee for the Court in the above matter and, within fourteen (14) days of this order, to notify the Clerk of the Florida Supreme Court as to the judge appointed as referee. The referee shall conduct a case management conference, to be held no later than sixty (60) days from the date of appointment, at which the schedule for the proceedings, including the final hearing date, shall be set. The referee shall have the option of holding the required case management conference

either in person or telephonically. The referee shall thereafter hear, conduct, try, and determine the matters presented at the final hearing, and submit findings of fact and recommendations to the Supreme Court of Florida as provided in rule 3-7.6(k). Except in cases where the ninety (90) day time limit provided by rule 3 -5.2(f) applies, the referee's report shall be filed within 180 days of his or her appointment, unless there are substantial reasons requiring delay.

DONE AND ORDERED at Tallahassee, Florida, on May 22, 2003

CHIEF JUSTICE

SUPREME COURT OF FLORIDA ATTEST:

THOMAS D. HALL CLERK, SUPREME COURT

Enclosed: Complaint.

A previous case involving this respondent was assigned to the Honorable Amy M. Williams.

IN THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT IN AND FOR PASCO AND PINELLAS COUNTIES, FLORIDA

THOMAS a HALL

ADMINISTRATIVE ORDER NO. 2003-026 PA/PI-CIR

CLERK, SUPBEME COURT

RE: APPOINTMENT OF REFEREE

It has been officially made known to me that it is necessary to appoint a referee for the Court pursuant to the provisions of Rule 3-7.6(a), Rules Regulating The Florida Bar, to preside in a disciplinary action, and

Therefore, The Honorable Harry Lee Anstead, Chief Justice of the Supreme Court of Florida, by Order dated May 22, 2003, designated the Chief Judge of the Sixth Judicial Circuit to appoint a referee for the Supreme Court of Florida in that proceeding, it is hereby

ORDERED:

The Honorable Amy M. Williams, County Court Judge, in and for the Sixth Judicial Circuit, State of Florida, is hereby designated and appointed as referee for the Supreme Court of Florida, in the matter of:

The Florida Bar v. Andrew Arthur Bevan, Supreme Court Case No. SC03-791;

The Honorable Amy M. Williams, as referee shall hear, conduct, try, and determine matters presented and shall submit findings of fact and recommendations to the Supreme Court of the State of Florida as provided in Rule 3-7.6(k). The referee's report shall be filed in accordance with the May 22, 2003, order of Chief Justice Anstead.

The Honorable Amy M. Williams, is hereby vested with all and singular the powers and prerogatives conferred by the Constitution, laws of the State of Florida, and the Rules_Regulating The Florida Bar, concerning a referee for the Supreme Court in thismaatt

DONE AND ORDERED in Chambers at St. Petersburg, FmeWas Coxfnty, Florida, this

30h day of May

D

avid A. Berners, Chief Judge cc: The Honorable Amy M. Williams

The Honorable Thomas D. Hall, Clerk of the Supreme Court of Florida
Scott K. Tozian, Counsel for Respondent
J. Christopher Lombardo
Stephen Christopher Whalen, Assistant Staff Counsel, The Florida Bar
John F. Harkness, Jr., Executive Director, The Florida Bar
John Anthony Boggs, Staff Counsel, The Florida Bar
J. William Lockhart, Courts Administrator
Pasco and Pinellas County Law Libraries

Please note: Judge William's address is: 14250 49th Street North, Ch. 22, Clearwater, FL 33762

Supreme Court of Florida

THURSDAY, JANUARY 20, 2005

CASE NOS.: SC03-275 and SC03-791 Lower Tribunal Nos.: 2003-10,964(20A)HFC,

Respondent's Motion for Rehearing or Reconsideration is hereby denied.

PARIENTE, C.J., and WELLS, ANSTEAD, LEWIS, QUINCE, CANTERO and BELL, JJ., concur.

A True Copy Test:

Thomas D. Hall

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Thomas D. Hall Clerk, Supreme Court

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dy ;?

Served: <

JOHN ANTHONY BOGGS

SUSAN VARNER BLOEMENDAAL

STEPHEN CHRISTOPHER WHALEN

ANDREW ARTHUR BEVAN

HON. AMY M. WILLIAMS, JUDGE

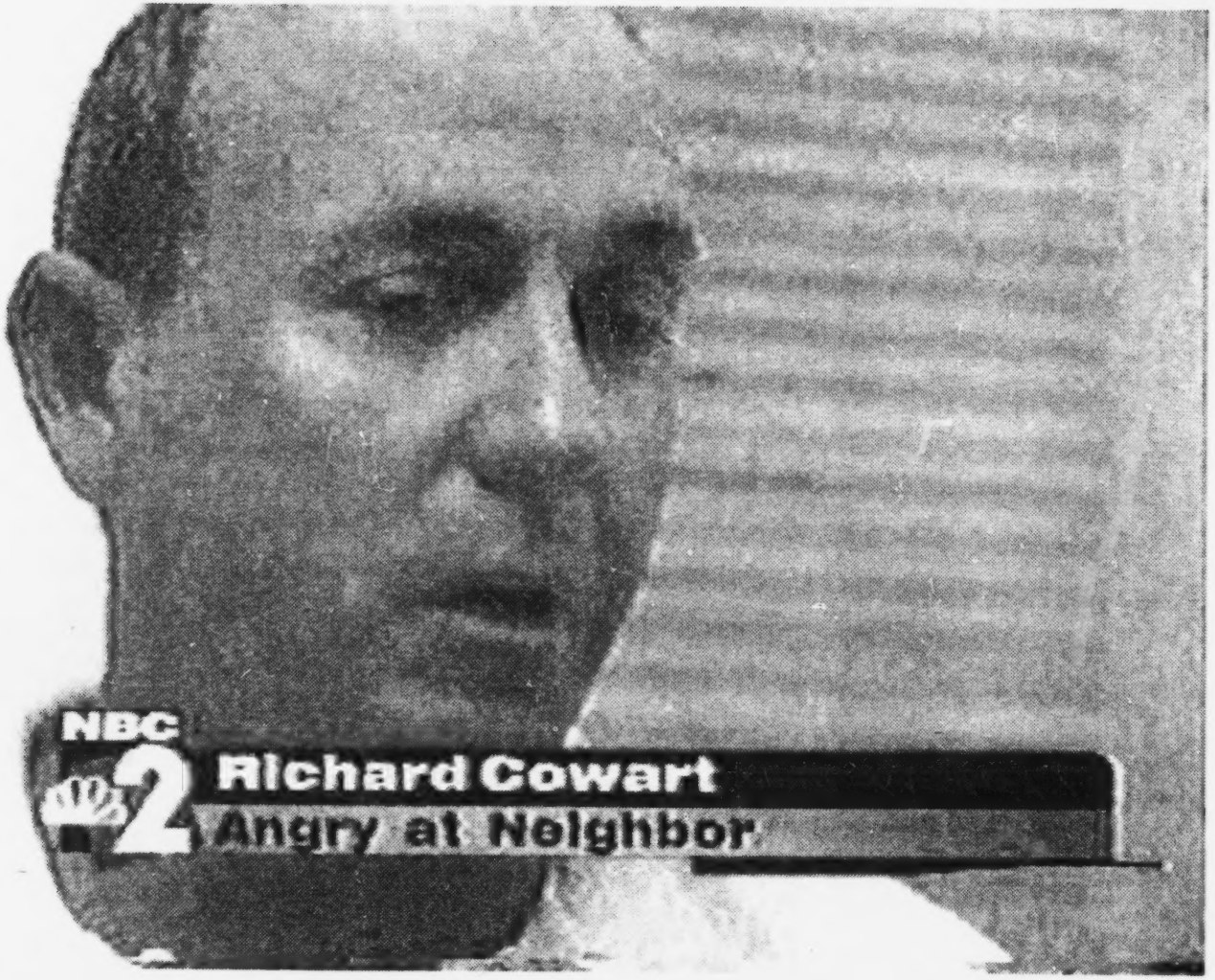
April 10, '99

I met Mr. Bevan in 1974 while I was incarcerated in the State of Fl. I was falsely accused of capital crimes. Mr. Bevan was made aware of my plight perhaps through the media or friends. He took it upon himself to visit me in jail and after we talked he accepted my word that I was innocent. Brian began doing research on my case and became totally convinced of my innonence .

I beleive that the investegative work that Mr. Bevan didon this case, had a great deal to do with The State dropping the case.

All of the investegative work that Brian has done on this case has been at his own expense. I beleive that Brian Bevan has a love for justice that is commendable.
I consider Brian Bevan a Friend.

Sincerely, Robert Tibbs



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Westlaw

395 So.2d 1285
395 So.2d 1285
(Cite as: 395 So.2d 1285)

District Court of Appeal of Florida, Second District.

Brian BEVAN, Appellant,
v.
Joseph P. D'ALESSANDRO, as State Attorney for the Twentieth Judicial Circuit,
Appellee.

No. 80-1662.

April 1, 1981.

Plaintiff appealed from the Circuit Court, Lee County, R. Wallace Pack, J., which dismissed with prejudice his replevin action for failure to prosecute. The District Court of Appeal, Boardman, J., held that where plaintiff had received no affirmative relief, nor did his action in taking a voluntary dismissal rise to the level of a fraud on the court under the circumstances, his absolute right to the benefits of rule providing for voluntary dismissal superseded his responsibility to comply with rule requiring plaintiff to show good cause, in writing, within five days before hearing on a motion to dismiss for failure to prosecute, why his action should remain pending.

Reversed and remanded.

West Headnotes

[1] Pretrial Procedure ⇐506.1
307Ak506.1 Most Cited Cases
(Formerly 307Ak506)

A party has an absolute right to take a voluntary dismissal at any time prior to a hearing on a motion for summary judgment, before the jury retires, or before submission of a nonjury case to the court for decision. 30 West's F.S.A. Rules of Civil Procedure, Rule 1.420(a)(1).

[2] Pretrial Procedure ⇐673

307Ak673 Most Cited Cases

Where plaintiff in replevin action had received no affirmative relief, nor did his action in taking a voluntary dismissal rise to level of a fraud on court under the circumstances, his absolute right to the benefits of rule providing for voluntary dismissal superseded his responsibility to comply with rule requiring a plaintiff to show good cause, in writing, within five days before a hearing on a motion to dismiss for failure to prosecute, why his action should remain pending, and thus trial court was without jurisdiction to hear defendant's motion to dismiss after plaintiff's voluntary dismissal. 30 West's F.S.A. Rules of Civil Procedure, Rule 1.420(a)(1), (e).

***1285 Brian Bevan**, pro se.

Jim Smith, Atty. Gen., Pamela L. Lutton, Asst. Atty. Gen., and Mary K. Kraemer, Certified Legal Intern, Tallahassee, for appellee.

BOARDMAN, Judge.

Brian Bevan appeals the trial court's dismissal with prejudice of his replevin action for failure to prosecute. The court's dismissal was entered after appellant had entered a voluntary dismissal. We reverse.

On October 20, 1978, appellant filed a complaint for return of a certain taped conversation, which he claimed he was entitled to pursuant to an agreement with the state attorney. It was dismissed with leave to amend, and appellant filed an amended complaint. Various motions were subsequently filed, one during January and the last on June 18, 1979. No further record activity occurred until June 27, 1980, when the state filed a motion to dismiss for failure to prosecute. Appellant received a copy of the motion, and on July 30, 1980, five days before the scheduled hearing on the motion, he voluntarily dismissed the case pursuant to Florida Rule of Civil Procedure 1.420(a)(1). The hearing

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on the state's motion nevertheless took place, with the result that the trial court dismissed the action with prejudice. The order was predicated upon appellant's failure to prosecute and his failure to comply with rule 1.420(e), which requires a plaintiff to show good cause, in writing, within five days before the hearing on a motion to dismiss for failure to prosecute, why his action should remain pending.

(1) Though we have been unable to locate a case which precisely addresses the situation involving the use of rule 1.420(a)(1) to avoid operation of rule *1286 1.420(e), a number of cases have held that a party has an absolute right to take a voluntary dismissal at any time prior to a hearing on a motion for summary judgment, before the jury retires, or before submission of a nonjury case to the court for decision. Fears v. Lunsford, 314 So.2d 578 (Fla.1975); Ambassador Insurance Co. v. Highlands General Hospital, 383 So.2d 254 (Fla.2d DCA 1980); Meyer v. Contemporary Broadcasting Co., 207 So.2d 325 (Fla. 4th DCA 1968); Annot., 36 A.L.R.3d 1113, 1167 s 14(b). This right is so entrenched that in Randall-Eastern Ambulance Service, Inc. v. Vasta, 360 So.2d 68 (Fla.1978), the trial court was not allowed to set aside a voluntary dismissal even when a plaintiff who had taken a voluntary dismissal quickly asked the court to set it aside after discovering that the statute of limitations had run on his wrongful death action. Our supreme court held that the plaintiff's voluntary dismissal divested the trial court of jurisdiction to subsequently relieve the plaintiff's attorney of the consequences of his tactical error.

(2) We are aware that in Select Builders of Florida, Inc. v. Wong, 367 So.2d 1089 (Fla.3d DCA 1979), the court carved out a narrow exception to the general rule, holding a voluntary dismissal inoperative in situations where fraud on the court was attempted by the filing of a voluntary dismissal. There, however, the plaintiff had received affirmative relief to which he was not entitled and sought to avoid correction of the trial court's error by taking a voluntary dismissal. Here, on the other hand, appellant has received no affirmative relief, nor does his action in taking a voluntary dismissal rise to the level of a fraud on the court under the circumstances. Therefore, although we feel appellant has thwarted the intent and purpose of the rule, his absolute right to the benefits of rule 1.420(a)(1) superseded his responsibility to comply with rule 1.420(e).

Accordingly, having determined that the trial court was without jurisdiction to hear appellee's motion to dismiss after appellant's voluntary dismissal, we REVERSE and REMAND the cause for proceedings consistent with this opinion.

HOBSON, Acting C. J., and DANAHY, J., concur.

395 So.2d 1285

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The CITY OF TREASURE ISLAND, Appellant,

v.

The PEOPLES COMMITTEE FOR COMMON SENSE GOVERNMENT, Appellee.

No. 86-2738.

District Court of Appeal of Florida, Second District.

April 22, 1987.

Political action committee sought injunction prohibiting city from spending public funds to advertise its position on an upcoming referendum vote. The Circuit Court, Pinellas County, Frank H. White, J., entered temporary injunction, and city appealed. The District Court of Appeal, Lehan, Acting C.J., held that political action committee had no standing to bring action absent showing it was taxpayer and thus affected by spending of tax money which it was challenging.

Reversed.

Injunction ⇐114(2)

Political action committee had no standing to seek injunction prohibiting city from spending public funds to advertise its position on upcoming referendum vote absent showing that it was taxpayer and thus affected by spending of tax money which it was challenging.

James W. Denhardt of Denhardt and Andringa, St. Petersburg, for appellant.

Denise J. Cohen, St. Petersburg, for appellee.

LEHAN, Acting Chief Judge.

The City appeals from a temporary injunction prohibiting the City from spending public funds to advertise its position on an upcoming referendum vote. We reverse.

The injunction was sought in a suit brought by the Peoples Committee for Common Sense Government, identified in its complaint as a political action committee organized under the laws of the state of Florida. We agree with the City's contention that the Peoples Committee had no standing to bring the suit.

The Peoples Committee argues that in a suit like this no special injury to plaintiff of the type referred to in *Rickman v. Whitehurst*, 73 Fla. 152, 74 So. 205 (1917), and *Godheim v. City of Tampa*, 426 So.2d 1084 (Fla. 2d DCA 1983),[1] need be shown when, as here, there is a constitutional attack upon a legislative body's exercise of its taxing and spending power. *See Department of Administration v. Horne*, 269 So.2d 659 (Fla.1972); *Godheim*, 426 So.2d at 1087. However, a plaintiff in this type of case must nevertheless show, and the Peoples Committee has not shown, that it is a taxpayer and is therefore affected by the spending of tax money which it is challenging. *See Department of Revenue v. Markham*, 396 So.2d 1120 (Fla.1981); *Horne*.

Reversed.

HALL and SANDERLIN, JJ., concur.

Brian BEVAN, Appellant,

v.

Frank WANICKA, individually and as Sheriff of Lee County, and Thomas Wallace, individually and as designated custodian of the records, Appellees.

No. 86-1999.

District Court of Appeal of Florida, Second District.

April 22, 1987.

Plaintiff brought Public Records Act action against county sheriff and custodian

1. *See also North Broward Hospital Dist. v. Fornes*, 476 So.2d 154 (Fla.1985).

of records. The Circuit Court, Lee County, James R. Thompson, J., declined to hold plaintiff in contempt when he failed to comply with defendants' discovery requests but dismissed suit with prejudice. The plaintiff appealed. The District Court of Appeal, Scheb, Acting C.J., held that defendants were entitled to discover sources of plaintiff's allegations as to destruction and concealment of records but were not entitled to discover plaintiff's past criminal record, if any.

Reversed and remanded.

1. Court's ⇐107

A simple denial of certiorari without opinion is not an affirmance and does not establish law of the case.

2. Pretrial Procedure ⇐36, 40

Plaintiff's Public Records Act action became more than a request for public records when he alleged destruction and concealment of records, and as such, county sheriff and custodian of records were entitled to discover sources of plaintiff's allegations as to those items; however, they were not entitled to discover plaintiff's past criminal record, if any. West's F.S.A. §§ 119.01 et seq., 119.07.

Brian Bevan, pro se.

Thomas C. Chase of Allen, Knudsen, Swartz, DeBoest, Rhoads & Edwards, P.A., Fort Myers, for appellees.

SCHEB, Acting Chief Judge.

Brian Bevan appeals a trial court's order dismissing his case with prejudice. We reverse.

Bevan filed suit against the appellees claiming a violation of the Public Records Act. *See* § 119.07, Fla.Stat. (1985). Bevan was seeking police records of an investigation pertaining to the death of a young man named William B. Jackman. Subsequently, he amended his complaint to include an allegation of destruction or concealment of records. In response to the amended complaint, appellees sought discovery, among other things, of the following: (1) information regarding Bevan's criminal history, if any; (2) the names, phone numbers, and addresses of witnesses who supplied Bevan with information regarding the allegedly missing records; and (3) the names, addresses, and phone numbers of any private investigators retained by Bevan to locate allegedly missing records. Although the trial court granted Bevan's motion for a protective order as to other items appellees sought, it required that he provide the information in (1), (2), and (3).

Bevan petitioned this court for writ of certiorari, contending that the trial court departed from the essential requirements of the law by compelling him to answer the subject questions. We denied his petition without opinion. *Bevan v. Wanicka*, 487 So.2d 296 (Fla. 2d DCA 1986). Thereafter, the trial court in a modified order compelled Bevan to answer questions regarding (1) his criminal history and (2) the names, phone numbers, and addresses of witnesses who had personal knowledge relating to the existence or nonexistence of public records.

Upon Bevan's refusal to answer such questions, appellees sought to have the court hold him in contempt and impose sanctions. At the hearing on their motion, the trial judge gave Bevan another opportunity to comply with the discovery request. When he again refused to answer the subject discovery, the trial court declined to hold him in contempt but dismissed his suit with prejudice. Bevan then filed this appeal.

[1] At the outset, we note that a simple denial of certiorari without opinion is not an affirmance and does not establish the law of the case. *Don Mott Agency, Inc. v. Harrison*, 362 So.2d 56 (Fla. 2d DCA 1978). Therefore, we reject appellees' contention that our denial of Bevan's petition for certiorari constitutes the law of the case now before us.

[2] The basic premise of the Public Records Act is to have all state, county, and municipal records in Florida open to public inspection, unless specifically exempted by statute. *Tribune Co. v. Public*

Records, 498 So.2d 480 (Fla. 2d DCA 1986). Furthermore, the Public Records Act does not condition the inspection of public records on any requirement that the person seeking to inspect records reveal that person's background information. *See* § 119.07, Fla.Stat. (1985). Therefore, unless the records Bevan sought were specifically exempted, he was entitled to inspect them in accordance with the statute. Here, however, Bevan's suit became more than a request for public records because he also alleged destruction and concealment of records. As such, the appellees were entitled to discover the source(s) of Bevan's allegations as to these items. There does not, however, appear to be any relevant reason for the discovery of Bevan's past criminal record, if any. *See News-Press Publishing Co., Inc. v. Gadd*, 388 So.2d 276 (Fla. 2d DCA 1980) (holding that the Public Records Act does not direct itself to the motivation of the person who seeks the records.)

Accordingly, we reverse the dismissal of Bevan's action. We remand for an evidentiary hearing as to whether the appellees have furnished Bevan all available public records to which he is entitled. If at that time Bevan still pursues his allegation of destruction and concealment, the trial court can re-address the appellees' requests for discovery concerning Bevan's knowledge of any alleged concealment or destruction of records.

RYDER and LEHAN, JJ., concur.

Robert S. BARCHANOWICZ, Appellant,

v.

STATE of Florida, Appellee.

No. 87-796.

District Court of Appeal of Florida, Second District.

April 22, 1987.

Appeal pursuant to Fla.R.App.P. 9.140(g) from the Circuit Court for Hillsborough County; Robert H. Bonanno, Acting Circuit Judge.

PER CURIAM.

Robert S. Barchanowicz appeals the summary denial of his motion for post-conviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. Although the trial judge denied the motion without an evidentiary hearing, he did not attach to his order any portion of the files or records to refute appellant's allegations.

Accordingly, we reverse the trial court's denial of appellant's motion and remand the case to the trial court. On remand, unless the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall order the state attorney to file an answer within a time certain. After receipt of the answer, the court shall determine whether an evidentiary hearing is required. If the court should again deny appellant's motion, he has thirty days in which to appeal.

Reversed and remanded.

RYDER, A.C.J., and HALL and SANDERLIN, JJ., concur.

Jerry L. FRANKLIN, Appellant,

v.

STATE of Florida, Appellee.

No. 86-1711.

District Court of Appeal of Florida, Second District.

April 24, 1987.

Appeal from the Circuit Court for Pinellas County; John S. Andrews, Judge.